IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5497 OF 2006

Gul Rupchand Kriplani. .. Petitioner .

vs.

Municipal Corporation of

Greater Mumbai & Ors. .. Respondents.

Mr. V.B. Naik i/by M/s. Naik, Naik, Iyer & Co. for petitioner.

Mr. A.S. Bhor for respondent nos. 1 & 2.

Mr. R.V. Govilkar for Respondent No. 3.

CORAM : A.P. DESHPANDE, J.

DATE : 17th November, 2006.

P.C.

. The petitioner herein is admittedly a tenant in the suit premises. A notice under section 55 of the Maharashtra Regional and Town Planning Act, 1966 which is addressed to the owner/occupier is served on the petitioner he being in occupation of the premises. The petitioner instituted a suit for declaration to the effect that the notice issued under section 55 is not legal. In the said suit, the respondent no. 3 filed a chamber summons seeking his impleadment under order 1 rule 10 of CPC

and the Judge, City Civil Court has allowed the same. This order is challenged by filing the instant petition.

2. The respondent no. 3 submits that he is a joint owner of the property in question and is possessed of a probate wherein the testator is the sister of the lessor. He further placed on record a property card indicating his name therein. In sum and substance the respondent no. 3 claims to be a co-owner of the property wherein the petitioner is the tenant. By notice issued under section 55 an unauthorised construction in the nature of wall is sought to be demolished. As in the opinion of the trial Judge, the respondent no. 3 claims a right and title in the subject matte of the suit viz., the wall concerned, the judge has permitted impleadment of respondent no. 3.

3. Perused the order. A possible view of the matter is taken by the Court blow which does not warrant interference in exercise of jurisdiction under Article 227 of the Constitution of India.

4. The learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in the case of Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay and others, reported in 1992 (2) SCC 524 in furtherance of his submission

that in such a situation a co-owner is neither a necessary party nor a proper party. The said judgment does not advance the submission of the petitioner as the facts are totally different. The discretion to be exercised under Order 1 Rule 10 is dependent upon the fact situation in every case. In the instant case it has been found that impleadment of the respondent no. 3 would be in furtherance of effective and complete adjudication of the dispute. Hence, no interference is called for. Petition summarily rejected. It is made clear that this order does not go to express any opinion in regard to the respondent no. 3's claim as a co-owner to the title of the property involved and all contentions are kept open including the issue of title and ownership to be decided in appropriate proceedings.

(A.P. Deshpande, J.)